(3)

No. 88-1719

Supreme Court, U.S.
FILED
AUG 18 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL NO. 391,
Petitioner

v.

THOMAS C. TERRY, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

JOINT APPENDIX

J. DAVID JAMES *
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PETITION FOR WRIT OF CERTIORARI FILED APRIL 18, 1989
CERTIORARI GRANTED JUNE 19, 1989

80 pp

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Note: The following items are contained in the Appendix to the Petition for a Writ of Certiorari:

Memorandum Opinion of District Court Denying Motion to Strike Plaintiffs' Jury Trial Demand, filed Nov. 10, 1987	Pet. App. A-1
Order of the U.S. Court of Appeals for the Fourth Circuit, filed Dec. 17, 1987	Pet. App. A-30
Opinion of the U.S. Court of Appeals for the Fourth Circuit, filed Dec. 20, 1988	Pet. App. A-31

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

July 25, 1983—Complaint filed in U.S. District Court for the Middle District of North Carolina.

August 3, 1983—Plaintiffs' Amended Complaint filed with District Court.

September 21, 1983—Answer of Defendant Chauffeurs, Teamsters and Helpers Local 391 to Plaintiffs' Amended Complaint filed with District Court.

January 6, 1986—Motion of Defendant Chauffeurs, Teamsters and Helpers Local 391 to Strike Plaintiffs' Jury Trial Demand filed with District Court.

February 18, 1986—Plaintiffs' Response to Motion to Strike Jury Trial Demand filed with District Court.

November 10, 1987—Memorandum Opinion and Order of District Court Denying Motion to Strike Plaintiffs' Jury Trial Demand.

December 17, 1987—Order of the U.S. Court of Appeals for the Fourth Circuit allowing Defendant permission to appeal pursuant to 28 U.S.C. § 1292(b).

January 4, 1988—Motion of Defendant to Strike Plaintiffs' Damage Demands for punitive damages and damages for emotional injury filed with District Court.

January 19, 1988—Plaintiffs' Response to Defendant's Motion to Strike Damage Demands filed with District Court.

December 20, 1988—Opinion and Judgment of the Court of Appeals for the Fourth Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

C-83-693-WS

THOMAS C. TERRY, and others similarly situated as set forth on Exhibit A,

Plaintiffs

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 391; and MCLEAN TRUCKING COMPANY, INC.,

Defendants

COMPLAINT

[Filed July 25, 1983]

NOW COME plaintiffs, Thomas Terry, and others similarly situated, through counsel and allege and say:

JURISDICTION

1. This is an action for declaratory and injunctive relief, damages and back pay under the terms of the Labor Management Relations Act of 1947, as amended, (hereinafter "the Act") 29 U.S.C. §§ 141 *et seq* and 159 (a) and the Labor Management Reporting and Disclosure Procedure Act of 1959 (hereinafter "LMRDA"), 29 U.S.C. §§ 401 *et seq*.

2. This Court has jurisdiction of the controversy pursuant to 29 U.S.C. §§ 185 and 412, U.S.C. §§ 1337, 2201, and 2202 and the doctrine of pendent jurisdiction.

3. The unlawful employment practices complained of below were and are being committed within the Middle District of the State of North Carolina.

PARTIES

4. Plaintiff Thomas Terry is a citizen and resident of Forsyth County, North Carolina.

5. Each of the other named plaintiffs listed on the attached Exhibit A are also citizens and residents of the Middle District of North Carolina.

6. The defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; and Chauffeurs, Teamsters, and Helpers Local 391, is a labor organization representing employees in an industry affecting commerce as defined in Sections 501(1) and (3) and 101(5) of the Act, 29 U.S.C. §§ 142(1) and (3), 152(5), and within the meaning of Section 301 of the Act, 29 U.S.C. §§ 185 and Section 3(c), (i) and (j) of the LMRDA, 29 U.S.C. § 402(c), (i) and (j).

7. The defendant, McLean Trucking Company, Inc. is a corporation organized and existing under the laws of the State of North Carolina and as at the time of the events complained of herein, and is presently engaged and doing business in the State of North Carolina with its principal place of business in Winston-Salem, North Carolina. The defendant is engaged in the business of interstate transportation of goods by truck and is an employer in an industry affecting commerce as defined by Sections 501(1) and (3) and 101(2), (6) and (7) of the Act, 29 U.S.C. §§ 142(1) and (3), 152(2), (6) and (7) and within the meaning of Section 301 of the Act, 29 U.S.C. § 185, and Section (3)(c) and (e) of the LMRDA, 29 U.S.C. § 402(c) and (e).

8. Plaintiffs were at all times complained of herein and presently are members in good standing of defend-

ant Local 391 and employees of the defendant McLean Trucking Company, Inc.

AGREEMENTS BETWEEN THE PARTIES

9. The defendants are signatories to and otherwise bound by a collective bargaining agreement entitled The National Master Freight Agreement together with the Carolina Freight Council Over-The-Road Supplement Agreement (March 1, 1982 through March 31, 1985). Each of these agreements was entered into by the Local for the benefit of its members. Plaintiffs, as members of the local union are entitled to the benefit of these agreements and to enforce the provisions thereof.

FIRST CAUSE OF ACTION

10. The matters and things complained of by the defendants are fully set forth in a letter dated April 14, 1983, from Thomas C. Terry, on behalf of all of the plaintiffs herein, to Mr. Roy Williams, General President of the National Grievance Committee and Mr. Arthur Bunte, Jr., employer chairman of the National Grievance Committee. That letter and each and every subparagraph thereof are incorporated by reference in this Complaint as if fully set forth. The letter is attached hereto as Exhibit B.

11. The defendant union, in breach of its statutory duty to represent the plaintiffs, conspired with the company to permit the decision of January 24, 1983, and the later actions of the company to stand. Upon information and belief it was agreed between the defendants that the actions of the company would not be opposed and that no action would be taken by the union to compel arbitration or otherwise contest the unlawful decisions and actions of the company.

12. By their failure to act on plaintiffs' behalf when requested to do so, and by their perfunctory and inadequate actions taken, the defendant unions have violated

their duty of fair representation of plaintiff and have arbitrarily discriminated, and in bad faith deprived them of their contract employment rights.

13. Defendant McLean Trucking Company violated the terms and provisions of a collective bargaining agreement, specifically Article 8 in connection with their change of operations and driver layoffs as more fully set forth in the attached Exhibit B.

14. As a result of the actions and omissions of the defendants, plaintiffs have suffered severe and substantial damages including loss of wages, moving expenses, future loss of wages, all in an amount to be shown at trial.

WHEREFORE, plaintiffs pray the Court that it issue a declaratory judgment that actions of defendants are unlawful and wrongful, award them compensatory damages, issue a permanent injunction enjoining future violations, award plaintiffs a reasonable attorney fee, tax the cost to the defendants, and for such other and further relief as the Court may seem just and proper. Plaintiffs demand trial by jury.

This the 25th day of July, 1983.

/s/ Jim D. Cooley
JIM D. COOLEY

/s/ Robert M. Elliot
ROBERT M. ELLIOTT
Attorneys for Plaintiffs

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Robert C. Munsey
Highway 710
Fairfield, Virginia 24435

EXHIBIT B

April 14, 1983

Mr. Roy Williams, General President of the National Grievance Committee International Brotherhood of Teamsters 25 Louisiana Ave, N.W. Washington, D.C. 20001

Mr. Arthur Bunte, Jr. Employer Chairman, National Grievance Committee 1050 17th St., N.W. Washington, D.C. 20036

Re: Case No. R-21-83
and Grievance of James
E. Wilson, Donald E.
Henderson, Sam Callahan,
C. C. Worley and other
affected employees
of McLean Trucking Company
(Filed February 28, 1983)

Gentlemen:

On January 24, 1983 the Eastern Area Joint Conference Change of Operations Committee rendercd a decision in Case No. R-21-83, a copy of which is attached to this letter. Subsequently the company, with the acquiescence of Local 391, has acted to circumvent the decision of the Committee. The relevant facts are as follows:

1. The grievants are all redomiciled drivers pursuant to the company's Change of Operations which was effective October 10, 1982.

2. Each of the grievants bid on the Winston-Salem jobs on August 29, 1982, after having been informed by the company that there were One Hundred Forty-Five (145) active drivers at Winston-Salem.

3. Sixty-two (62) drivers were added to Winston-Salem as a result of the change of operations; however,

when the Sixty-Two (62) redomiciled drivers arrived in Winston-Salem they found One Hundred Eight-Five (185) drivers on the active list. With the addition of the Sixty-Two (62) redomiciled drivers, there were then, effective October 19, 1982, Two Hundred Forty-Seven (247) active drivers.

4. On November 23, 1982 Thirty (30) redomiciled drivers were placed on layoff, leaving a total of Two Hundred Seventeen (217) active drivers. The next day a grievance was filed by these drivers which resulted in the decision in Case No. R-21-83 on January 24, 1983.

5. Prior to the decision on the grievance the company brought an additional Twenty-Five (25) drivers back to work from layoff status. These were all drivers who had been on the Winston-Salem inactive list as of October 10, 1982, and were not part of the One Hundred Eighty-Five (185) who were active at the time the Change of Operations went into effect. They were brought back during the period of time from approximately December 4 to December 7, 1982, making a total of Two Hundred Forty-Two (242) active drivers. On January 7, 1983, prior to the Committee's decision in Case No. R-21-83, an additional Twenty (20) drivers, most of whom were redomiciled drivers, were placed on layoff.

6. On February 4, 1983 the Company set out to "comply" with the decision in Case No. R-21-83. By February 7, 1983 it had recalled all of the Thirty-Six (36) redomiciled drivers who had been placed on layoff either on November 23, 1982 or January 7, 1983 and who had not yet been recalled. At the same time it placed on layoff the Thirty (30) drivers who had been on the inactive list as of October 10, 1982 but who had been called back since that time.

7. Effective February 8, 1983 all Thirty (30) Winston-Salem drivers who had been laid-off on the previous day were called back to work. Most did not even receive their

notice of layoff from the previous day before receiving notice of recall, and none of them missed any time from work whatever. Grievants contend that the company had allowed the work to build up during this period of time in order to be able to call this number of drivers back within a two-day period.

8. It was obvious during this entire period of time that there were more drivers called back to work than there was work to be done or equipment to operate. Subsequently, on February 26, 1983 Twenty (20) drivers (all of whom were redomiciled drivers under the October 10 change of operations) were laid off. None of the Thirty-One (31) Winston-Salem drivers who had been recalled on February 8, 1983 were placed on layoff. Afterwards ten (10) drivers (all redomiciled drivers) were layed off on March 5, 1983; they were called back on March 19, 1983.

Grievants contend that the company recalled the Thirty (30) drivers on February 8, 1983 as a subterfuge to avoid and circumvent the decision of the Change of Operations Committee in Case No. R-21-83. At the time they were called back, the Thirty (30) drivers had more seniority than the redomiciled drivers. By being called back on February 8 for "regular work", the Thirty (30) drivers were, in effect, permitted to regain their place on the active list ahead of the redomiciled drivers. The redomiciled drivers subjected to layoff on February 26, 1983 filed a grievance on February 28, 1983 which was scheduled, improperly, for a hearing before the Joint Bi-State Grievance Committee in Myrtle Beach, South Carolina on March 16, 1983. A copy of the grievance is attached. At that meeting grievants Terry and others were present and presented a letter addressed to Business Agent C. S. Williams dated March 14, 1983. They requested that since the Union had a clear conflict between the interest of one group of its members and themselves, they permitted to bring independent counsel

with them to represent their interests. This request was denied. A copy of the letter which was presented to the Committee is attached. Thereafter, grievant Terry sought to ask questions of business agent Williams concerning the Union's acquiescence in the company's recall of the Thirty (30) Winston-Salen drivers who were inactive as of October 10, 1982 but who were recalled, laid off and then recalled in the sequence set forth above. He was not permitted to ask any questions. The committee then voted to deny the grievance. A copy of the letter to grievants notifying them of this decision is attached.

The matter which the Union presented to the Joint Bi-State Grievance Committee and which that committee decided adversely to the grievants was a matter *solely* for the Change of Operations Committee pursuant to Article 8, Section 6 of the National Master Freight Agreement. Undersigned grievants thereafter requested that the Area Change of Operations Committee review the matter and declare the decision of the Joint Bi-State Grievance Committee null and void for lack of jurisdiction. They further requested that their letter be accepted as a statement of grievance on their behalf and on behalf of other affected redomiciled employees at the Winston-Salem facility and that the matter be scheduled for hearing at the next meeting of the Change of Operations Committee. Grievants further requested that they be permitted to present their position through independent counsel at that hearing since it was clear that there was (and still is) a conflict of interest between themselves and another group of employees who were also members of Local 391. Finally, grievants requested that they be provided with a copy of the Rules of Procedure adopted by the National Grievance Committee pursuant to Article 8, Section 6, Paragraph (b) and any side or supplemental agreements to the National Agreement which were relevant to this matter.

By letter dated April 1, 1983 from James H. Hutchinson, Jr. and Joseph W. Burkhard, Employer and Union Co-Secretaries, respectively, for the Eastern Conference, the Charge of Operations Committee refused to review the matter and determined that the decision of the Bi-State Committee was "final and binding." A copy of the letter is attached. The National Grievance Committee's Rules of Procedure were not provided, as requested.

In refusing to consider their request, the Change of Operations Committee has permitted the Company to circumvent the clear language of Article 8, Section 6, which reads, in pertinent part:

> Employees shall bid from the combined master seniority roster into openings at the terminal(s) into which work is being transferred. Employees so transferring shall be "dovetailed" into the appropriate active seniority roster at the new terminal(s) in the order of their continuous classification seniority. *Such transfers shall be permitted prior to the recall of laid off employees at such gaining terminal(s). If and when additional employees are required in excess of those who formed the combined active roster at the point of redomicile*, employees on letter of layoff at that location shall be recalled. If recalled, such employees shall be "dovetailed" with their continuous classification seniority.

(Emphasis added) The undersigned grievants hereby call upon the National Grievance Committee for an interpretation of the above-quoted language of Article 8, Section 6, as permitted by Article 8, Section 1. Grievants request that the Conference Joint Area Committee be instructed to hear the matter for the purpose of making a record, "after which it shall be immediately referred to the National Grievance Committee."

So that the grievants will be able to fully present this matter free of the conflict of interest of the local union,

it is further requested that they be permitted independent counsel to represent them before the Conference Joint Area Committee and the National Grievance Committee.

So that the grievants will know whether any further steps are necessary for them to present this matter properly to the National Grievance Committee and whether the committee will hear the matter, a response to this letter is requested within then (10) days. It should be addressed to Mr. Thomas C. Terry at the following Address:

Thomas C. Terry
Post Office Box 12688
Winston-Salem, N.C. 27107

Sincerely yours,

(On behalf of all affected employees)

xc: Mr. C. S. Williams (Local 391 Business Agent)
Mr. R. S. Bell (Director, Labor Relations, McLean Trucking Co.)

Enclosures

EASTERN CONFERENCE JOINT AREA COMMITTEE

OFFICE OF THE EMPLOYER
Co-Secretary
925 Penn Avenue
Pittsburgh, Pennsylvania 15222
PHONE: Area Code 412
281-9364

OFFICE OF THE UNION
Co-Secretary
4641 Montgomery Avenue
Bethesda, Maryland 20014
PHONE: Area Code 301
656-6006

April 1, 1983

Mr. Thomas C. Terry
P. O. Box 12688
Winston-Salem, North Carolina 27107

Re: Case No. R-21-83
Local 391 v. McLean
Trucking Co.

Dear Mr. Terry:

In response to your letter dated March 23, 1983, please be advised that it is our position that the grievance was properly before the Bi-State Committee. Accordingly, the decision of that Committee is final and binding.

Any grievance should be presented to your Local Union. We disagree that the matter of your previous grievance was solely an issue within the jurisdiction of the Change of Operations Committee. Once the Change of Operations Committee has made a decision, any alleged breaches of the Agreement are properly submitted to the local grievance committee.

I trust that this explanation answers your problem, although we recognize that the answer is not satisfactory to you. If you have a grievance, it must be presented to your Local Union. You are obligated to present your grievance to your Local Union in accordance with the collective bargaining agreement and your internal union procedures of your Constitution.

There is no absolute right to be represented by your own attorney and the procedures before any grievance committee under the collective bargaining agreement must be determined by the rules of that committee. In general, attorneys do not participate in the grievance committee proceedings.

Very truly yours,

/s/ James H. Hutchinson, Jr.
JAMES H. HUTCHINSON, JR.
Employer Co-Secretary

/s/ Joseph W. Burkhard
JOSEPH W. BURKHARD
Union Co-Secretary

JHHjr:JWB:hbm

CHAUFFEURS, TEAMSTERS & HELPERS
LOCAL 391

Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Eastern Conference of Teamsters

Joint Council No. 9

R. V. DURHAM
president

B. D. BLEVINS
secretary-treasurer

March 18, 1983

TO ALL OVER-THE-ROAD DRIVERS EMPLOYED BY McLEAN TRUCKING COMPANY, WINSTON-SALEM, N. C. TERMINAL:

Re: Grievance filed by James E. Wilson, Donald E. Henderson, Sam Callahan, C. C. Worley and all affected employees contending they were improperly and unjustly laid off effective 2/26/83 and requesting to be immediately returned to the lineup and compensated for all lost earnings for the period of time they were held off in violaton of the decision in Case No. R-21-83.

The above referenced case was heard by the Carolina Bi-State Grievance Committee on Wednesday, March 16, 1983. The decision of the Committee was as follows:

"Having considered all the facts and exhibits as fully presented by the Local Union and the Employer and the testimony of the individual grievants, the Committee finds that the layoffs of the grievants, effective February 26, 1983 was proper and in accord with the provisions of Articles 8 and 42 of the National Master Freight Agreement and the Carolina Freight Council Over-the-Road Supplement and in compliance with the decision of the

Eastern Conference Joint Area Committee in Case No. R-21-83. The Committee finds no subterfuge. Accordingly, the claim is denied."

If there is any question regarding the above decision, please do not hesitate to call me.

Fraternally yours,

TEAMSTERS LOCAL UNION
No. 391

/s/ C. S. Williams
C. S. WILLIAMS
First Trustee and
Business Agent

CSW:c

cc W. Honeycutt
W. F. Bowman

March 14, 1983

Mr. C. S. Williams
First Trustee and Business Agent
Chauffeurs, Teamsters and Helpers Local 391
Post Office Box 929
Kernersville, North Carolina 27284

Re: Grievance Complain of 2/28/83
of James E. Wilson, Donald E. Henderson, Sam Callahan, C. C. Worley and all affected employees of McLean Trucking Company

Dear Sir and Brother:

The undersigned grievants in a grievance complaint filed against McLean Trucking Company on February 28, 1983 hereby request that they be permitted to retain independent counsel to represent them and appear on their behalf at the meeting of the Carolina Bi-State Committee which is presently scheduled for Wednesday, March 16, 1983 and at all subsequent meetings, hearings and proceedings. As grounds for this request grievants contend that the Local Union, and its business agent, intend to remain neutral rather than actively advocate the position of grievants. Further, business agent Williams, on behalf of Local 391, has already taken a position contrary to that set forth in the grievance complaint, as shown from the transcript of the July 26, 1982 meeting of the Eastern Conference Joint Area Committee when the Change of Operations was first being considered. For these reasons the grievants must have independent counsel to represent them and present their position.

The undersigned grievants further request that the matter be continued from the March 16, 1983 meeting of the Carolina Bi-State Committee to the next meeting of that committee in order to permit them adequate time to retain counsel and for counsel to be prepared to present their claim.

It is requested that the Local Union and the company representative to whom a copy of this letter is being sent, immediately contact grievant Thomas C. Terry at 765-2102 to communicate their position on the request for representation by independent counsel and the request for a continuance until the next meeting of the Carolina Bi-State Committee.

Sincerely yours,

xc: Mr. R. S. Bell

Teamsters Local Union 391

Date 2/28/83

COMPLAINT

Nature of Complaint: The below listed employees contend that they were improperly and unjustly laid off effective Sat., 2/26/83, as a subterfuge to circumvent the decision rendered in Case R-21-83 and Article 8 of the National Master Freight Agreement and Carolina Freight Council Over-the-Road Supplemental Agreement. They are requesting to immediately be returned to the regular lineup and compensated for all lost earnings for the period of time that they were held off in violation of the decision in Case No. R-21-83.

Name of Complaint: /s/ James E. Wilson, /s/ Donald E. Henderson, /s/ Sam Callahan, /s/ C. C. Worley and all affected employees.

Employed by: McLean Trucking Company

Date (s) Discussed with Employer: 1. ——— 2. ——— 3. ———.

Disposition of Complaint: Settled [ ]; Withdrawn [ ]; Referred to Grievance (unable to settle) [ ].

Decision by Committee: Claim Upheld [ ]; Denied [ ].

Basis for Settlement or Withdrawal (Explain)

Steward) who handled Complain: C. S. Williams
Agent)

Eastern Conference Joint Area Committee

Established in accordance with the terms and conditions of the National Master Freight Agreement and the Carolina Supplemental Agreement, entered into by and between the Local Union and carriers engaged in City Pickup and Delivery and or Over-the-Road Freight Operations.

———

Docket No. R-21-83

IN THE MATTER OF THE DISPUTE BETWEEN
TEAMSTERS LOCAL(s) 391, KERNERSVILLE, N.C.

and

MCLEAN TRKG. CO.

———

SUBMISSION

———

We, the undersigned, parties to the National Master Freight Agreement and the Carolina Supplemental Agreement, hereby agree to submit the dispute to arbitration under the Rules of Procedure prescribed by the Eastern Conference Joint Area Committee, by virtue of its authority, as set forth in Article 43 and 44 of the Carolina Supplemental Agreement, the following:

> On behalf of E. L. Strange, D. E. Henderson, et al, the Union is alleging a violation of Arts. 5, 8 & 42. Improper Layoff. Requesting 8 hrs. per day on unjustly laid off time.

The undersigned further agree that a majority of the Eastern Conference Joint Area Committee in the above dispute will be final, conclusive and binding with no appeal and, further, that neither party will attempt through any overt acts, to void the decision rendered.

The undersigned also agree that failure to comply with the decision of a majority of the Committee within ten (10) days of the date of the decision will result in the loss of all contract rights, privileges and benefits due them under Article 44 of the Carolina Supplemental Agreement.

Date	Jan. 24, 1983
Employer	McLean Trkg.
Signed by	R. S. Bell
Title	Director—Labor Relations
Local Union(s)	391
Signed by	Charles Williams
Title	First Trustee & B.A.

DECISION

The panel in executive session, motion made, seconded and carried that in accordance with the established seniority rules of the Joint Conference Change of Operations Committees, the company and Local Union are instructed that, effective February 7, 1983, the company is to recall to work those drivers that made up the Winston-Salem active seniority list on the date the change of operations took effect (Oct. 10-11, 1982), i.e., those redomiciled drivers as well as Winston-Salem drivers working on this date. Those drivers who do not qualify for regular work under this decision shall be laid off and subject to recall when regular work develops in excess of 220 regular positions. Should future layoffs be necessary then individuals on this active seniority list shall be laid off on reverse seniority order and shall be recalled to work before those drivers who were on the inactive list as of Oct. 10-12 1982 are recalled.

The company and Local Union are further instructed to verify the number that were actually on the active seniority list as of October 11-12, 1982, and if that number is at odds with the number 220, as listed herein, then that number shall apply. The moretary claim is denied.

Relative to the claim by Mr. Terry, the Committee reviewed the transcript, the records, and the decision and find that under the application of the Southern Modified Seniority, the claim is without merit. The claim is denied. Cost Split.

James H. Hutchinson, Jr. Employer Co-Secretary	Joseph W. Burkhard Union Co-Secretary
January 24, 1983 (Date)	January 24, 1983 (Date)

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

File No. C-83-693-WS

THOMAS C. TERRY, and others similarly situated as set forth on Exhibit A,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 391; AND McLEAN TRUCKING COMPANY, INC.,

Defendants.

AMENDMENT OF COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the plaintiffs hereby amend their Complaint as a matter of right, including the caption and other allegations as indicated on the attached Amended Complaint filed herein.

This the 3d day of August, 1983.

/s/ Jim D. Cooley
JIM D. COOLEY

/s/ Robert M. Elliot
ROBERT M. ELLIOT
Attorneys for Plaintiffs

Of Counsel:

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IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

File No. C-83-693-WS

THOMAS C. TERRY, DAN FIELDS, JIM CROWE, KEITH BARKER, JAMES A. RICHARDS, DON WRIGHT, DAVID L. GILTZ, DALE BISHOP, TONY BAITY, JAMES R. DAVIS, DON BRITT, LONNIE DAVIS, JIM WILSON, DAVID C. KING, DONALD E. HENDERSON, ARTHUR JARRELL, RON RAY, J. C. GREER, GARY PEEBLES, HAROLD DYSON, ED STRANGE, SAM E. CALLAHAN, GEORGE C. BLANKENSHIP, JR., PAUL EMBRY, CLAYTON WORLEY, JOHN R. MARSHALL, and ROBERT C. MUNSEY,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 391; and McLEAN TRUCKING COMPANY,

Defendants.

AMENDED COMPLAINT

The plaintiffs, amending their Complaint as a matter of right pursuant to Rule 15 of the Federal Rules of Civil Procedure, state and allege the following:

JURISDICTION

1. This is an action for declaratory and injunctive relief, damages and back pay under the terms of the Labor Management Relations Act of 1947, as amended, (hereinafter "the Act"), 29 U.S.C. §§ 141 *et seq* and 159(a) and the Labor Management Reporting and Disclosure Procedures Act of 1959 (hereinafter "LMRDA"), 29 U.S.C. §§ 401 *et seq.*

2. This Court has jurisdiction of the controversy pursuant to 29 U.S.C. §§ 185 and 412; 28 U.S.C. §§ 1337, 2201, and 2202, and the doctrine of pendent jurisdiction.

3. The unlawful employment practices complained of below were and are being committed within the Middle District of the State of North Carolina.

PARTIES

4. The following plaintiffs are citizens and residents of the Middle District of North Carolina: Thomas C. Terry, Dan Fields, Jim Crowe, Keith Barker, David L. Giltz, Dale Bishop, Tony Baity, James R. Davis, Don Britt, Lonnie Davis, Jim Wilson, David C. King, Donald E. Henderson, Arther Jarrell, Ron Ray, J. C. Greer, Gary Peebles, Harold Dyson, Clayton Worley, and Don Wright.

5. The plaintiffs James A. Richards, Ed Strange, Sam E. Callahan, George C. Blankenship, Jr., Paul Embry, Donald E. Henderson, John R. Marshall, and Robert C. Munsey, are citizens and residents of the State of Virginia.

6. The defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (hereinafter "defendant International Union"); and the defendant Chauffeurs, Teamsters, and Helpers, Local 391, (hereinafter "defendant Local Union") are labor organizations representing the employees in an industry affecting commerce as defined in Section 501(1) and (3), and 101(5) of the Act, 29 U.S.C. §§ 142(1) and (3), 152(5); and within the meaning of Section 301 of the Act, 29 U.S.C. §§ 185 and Section 3(c), (i) and (j) of the LMRDA, 29 U.S.C. § 402(c), (i) and (j). At all times mentioned herein the defendant Unions were the exclusive bargaining agent for the plaintiffs and other employees of the defendant McLean Trucking Company.

7. The defendant, McLean Trucking Company (hereinafter "defendant Company") is a corporation organized

and existing under the laws of the State of North Carolina. Said defendant is presently and was at all times complained of herein engaged and doing business in the State of North Carolina with its principal place of business in Winston-Salem, North Carolina. The defendant is engaged in the business of interstate transportation of goods by truck, and is an employer in an industry affecting commerce as defined by Sections 501(1) and (3) and 101(2), (6) and (7) of the Act, 29 U.S.C. §§ 142(1) and (3), 152(2), (6) and (7) and within the meaning of Section 301 of the Act, 29 U.S.C. § 185, and Section (3)(c) and (e) of the LMRDA, 29 U.S.C. § 402(c) and (e).

8. All plaintiffs, with the exception of plaintiffs Marshall and Munsey, are presently and were at all times mentioned herein members in good standing of the defendant Unions and employees of the defendant Company. The plaintiffs Marshall and Munsey are members in good standing of the defendant Unions; and were at all times mentioned herein employees of the defendant Company until their respective terminations from said employment, plaintiff Marshall in or about June, 1983, and plaintiff Munsey in or about November, 1982. All plaintiffs were employed by the defendant Company as truckdrivers.

AGREEMENTS BETWEEN THE PARTIES

9. The defendants are signatories to and otherwise bound by a collective bargaining agreement entitled The National Master Freight Agreement together with the Carolina Freight Council Over-The-Road Supplemental Agreement (March 1, 1982 through March 31, 1985) and other supplemental agreements in other parts of the country (hereinafter "the Agreements"). Each of these agreements was entered into by the defendant Union for the benefit of their members. Plaintiffs, as members of the defendant Unions, are entitled to the benefit of these agreements and to enforce the provisions thereof.

10. Article 8 of the Agreement contains the following provisions which, among others, are pertinent to this action:

> Closing, Partial Closing of Terminals—Transfer of Work
>
> (1) When branches, terminals, divisions or operations (hereinafter "terminal(s)") are closed or partially closed and the work of such terminal(s) is transferred, in whole or in part, to another terminal(s) the active employees (excluding those employees on letter of layoff) at the closed or partially closed terminal(s) shall have the right to bid into another seniority roster (road or city) comprised of bidders from the active seniority rosters of closed or partially closed terminal(s) in the order of their continuous classification (road or city) seniority. Continuous classification seniority shall be defined as that seniority which the employee is currently exercising and has not been broken in the manner provided by Article 5, Section 1 or by voluntary changes in domicile not directed, approved or ordered by a Change of Operations Committee. Employees shall bid from the combined master seniority roster into openings at the terminal(s) into which work is being transferred. Employees so transferring shall be "dovetailed" into the appropriate active seniority roster at the new terminal(s) in the order of their continuous classification seniority. Such transfers shall be permitted prior to the recall of laid off employees at such gaining terminal(s). If and when additional employees are required in excess of those who formed the combined active roster at the point of redomicile, employees on letter of layoff at that location shall be recalled. If recalled, such employees shall be "dovetailed" with their continuous classification seniority.

> In addition, the inactive seniority rosters (employees who are on letter of layoff) at the terminal(s) from which employees are being redomiciled shall be "dovetailed" into a master "laid-off" seniority roster and such employees shall have the same opportunities to transfer to terminal(s) within the Area of the Supplemental Agreement which are afforded to employees covered by the provisions of subparagraph 2(b) below.
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> • • •
>
> (4) Any employee redomiciled by an approved Change of Operations or vountary transfer to another domicile shall upon reporting to such new domicile be deemed to have relinquished his right to return, with seniority, to the domicile from which he was transferred, except under another approved Change of Operation. Employees who avail themselves of the transfer privileges because they are on layoff at their original terminal may exercise their seniority rights if work becomes available at their original terminal during the three year layoff period allowed them at their original terminal.

FIRST CAUSE OF ACTION

11. Prior to October 10, 1982, the plaintiffs were, as previously stated, all members of the defendant Unions and employees of the defendant Company who were based in the defendant Company's terminals in other areas of the country. In or about July, 1982, the plaintiffs were informed by the defendant Company that there would be a change of operations entailing a reduction in the number of drivers in some terminals. In accordance with the above Agreements, the defendant Company proposed a Change of Operations, which specified certain terminals of the defendant Company which would gain drivers and other terminals which would lose drivers. Said Change of Operations also specified the number of drivers to be added to or reduced from each terminal.

12. On July 26, 1982, the defendant Company's Change of Operations Plan was approved with certain modifications by the Joint Conference Change of Operations Committee, which had been established by the defendants pursuant to the above Agreements. The approved Change of Operations Plan stated that, "The Company will post at each losing domicile (copy to Local Union) a copy of the current seniority list of each gaining domicile. . ." The Decision of the Joint Committee approving said Plan provided in pertinent part the following:

> 5. Those employees redomiciling shall bid out of their present domicile on the basis of their current classification bidding seniority and shall be dovetailed into the seniority list at the redomicile point on the basis of this bidding seniority except that individuals redomiciling to points within the Eastern Conference area shall be dovetailed on the basis of company seniority.
>
> * * *
>
> The active seniority list shall be determined as of June 15, 1982. The effective date of this change shall be no sooner than September 7, 1982.

13. In accordance with the above Agreements, and the Decision of the Joint Committee, the plaintiffs were given the opportunity to bid on certain terminals where they could transfer to follow work which would be re-routed pursuant to the Change of Operations, and were provided the active seniority list of each gaining domicile. The Change of Operations specified that the Winston-Salem terminal of the defendant Company had 145 drivers on its active list and would add an additional 62 drivers to its active list to meet the increased work demands resulting from the changes. Based on these representations of the defendant Company, the plaintiffs bid on the Winston-Salem job and obtained transfers from their previous domiciles to the Winston-Salem terminal of the defendant Company.

14. On or about October 10, 1982, all of the plaintiffs in fact transferred to the Winston-Salem terminal of the defendant Company. However, when they arrived, there were 185 drivers on the active list as opposed to the 145 drivers which had been represented in the Change of Operations Plan of the defendant Company. Thus, with the addition of the 62 re-domiciled drivers, there were 247 active drivers in the Winston-Salem Terminal of the defendant Company on October 10, 1982.

15. On or about November 23, 1982, 30 re-domiciled drivers, including the plaintiffs, were placed on layoff, leaving a total of 217 active drivers. On November 24, 1982, a grievance was filed by the plaintiffs in which they charged that the defendant Company had misrepresented the number of active drivers in the Winston-Salem terminal at the time the plaintiffs bid on the jobs; and as a result of said misrepresentation, many of the plaintiffs were laid off and denied the opportuntiy to work.

16. On November 30, 1982, the plaintiff Terry filed a grievance requesting to be returned to his original terminal in Oklahoma City, Oklahoma. The plaintiff Terry based his request on provisions in the above Agreements which provided that a re-domiciled driver who was laid off in his former domicile prior to making his bid could request a transfer back to his former domicile if he became laid off at his new domicile.

17. Prior to the decision on the aforesaid grievances, the defendant Company brought an additional 25 drivers back to work from layoff status. These were all drivers who had been on the Winston-Salem inactive list as of October 10, 1982, and were not part of the 185 drivers who were active at the time the Change of Operations went into effect. They were brought back during the period of time from approximately December 4, to December 7, 1982, making a total of 242 active drivers. On January 7, 1983, an additional 20 drivers, most of whom

were again re-domiciled drivers including some of the plaintiffs, were placed on layoff.

18. On or about January 17, 1983, the Bi-State Committee composed of members of the defendant Company and the defendant Unions referred the aforesaid grievances, Case No. R-21-83, to the Multi-Conference Change of Operations Committee. However, the Eastern Conference Joint Area Committee was subsequently scheduled to hear said grievances. Said Committee, which was also composed of members of the defendant Company and the defendant Unions, conducted a hearing on the plaintiffs' grievances on January 24, 1983. At said hearing the authorized representative of the defendant Local Union represented to the Committee that he would be unable to represent the plaintiffs on their grievances because of a conflict of interest between the plaintiffs and other members of the defendant Local Union; and that he would therefore remain neutral. Nevertheless, the Committee proceeded to hear the evidence and make a decision.

19. On February 4, 1983, the plaintiffs were given notice of the Decision of the Eastern Conference Joint Area Committee in Case No. R-21-83. Said Decision ordered the defendant Company to recall all drivers who made up the Winston-Salem active list on October 10, 1982, by February 7, 1983, and to lay off any drivers who were not included on said list. The Decision further provided that if future layoffs were necessary, then the drivers on the active list would be laid off "in reverse seniority order and shall be recalled to work before those drivers who were on the inactive list as of October 10, 1982 are recalled." The Committee denied the plaintiffs' claims for monetary damages resulting from the defendant Company's violation of the above Agreements. The plaintiffs exhausted all remedies available to them under said Agreements.

20. In the aforesaid Decision the Committee also denied plaintiff Terry's grievance which had been filed on

November 30, 1982. The plaintiff Terry exhausted all remedies available to him under said Agreements.

21. In its actions from June, 1982, through January, 1983, the defendant Company breached the above Agreements and violated the terms of the Change of Operations which had been approved by Decision of the Committee on July 26, 1982. Specifically, the defendant Company violated said Agreement and Decision in adding 40 drivers to the active list of the Winston-Salem terminal to total 185 active drivers after representing to the plaintiffs and others that there would be 145 drivers on the active list; by laying off the plaintiffs in November, 1982, through January, 1983, and in failing to recall them before drivers who had been on the inactive list as of October 10, 1982; by failing to transfer the plaintiff Terry to his former domicile as requested in his Grievance of November 30, 1982; and in failing to compensate the plaintiffs for lost wages which they incurred as a result of the wrongful actions of the defendant Company. The foregoing and other actions of the defendant Company were committed with the collusion and acquiescence of the defendant Unions for the specific purpose of favoring Winston-Salem drivers who had been on the inactive list at the time of the Change of Operations by manipulating their layoffs and recalls in order to push the plaintiffs into lower seniority positions than they were entitled to under the Agreements and Decision above. At the time of the Change of Operations and the bids for the Winston-Salem terminal, the plaintiffs relied on representations of the defendant Company as to the number of drivers on the active list; the defendant Company should, therefore, be estopped from denying that the total number of active drivers on the active list in the Winston-Salem terminal as of October 10, 1982, was 145 as represented to the plaintiffs, and that the previous and unnounced additions of Winston-Salem drivers from the inactive list prior to October 10, 1982, constituted a violation of the Change of Operations Decision above.

22. The defendant Unions, in breach of their statutory duty of fair representation owing to the plaintiffs under the provisions of the Act, conspired with the defendant Company to engage in the aforesaid actions in violation of the rights of the plaintiffs; and acquiesced in such acts in order to further the interests of their Winston-Salem members who had been on the inactive list at the time of the Change of Operations, and to bring them back onto the active list. Said actions on the part of the defendant Unions in concert with and in collusion with the defendant Company constitutes blatant discrimination against the plaintiffs in favor of other members of the defendant Local Union who had been employed at the Winston-Salem terminal for a longer period of time.

23. The defendant Unions further breached their duty of fair representation against the plaintiffs to represent the plaintiffs on their grievances in an effective and adequate manner. In fact, due to an acknowledged conflict of interest between its members, the defendant Local Union represented to the Committee that it was "neutral" when in fact, it was well known that the defendant Union was biased in favor of the Winston-Salem drivers, and was hostile to the interests of the plaintiffs. By failing to act on plaintiffs' behalf and by their perfunctory and inadequate actions taken, the defendant Unions have violated their duty of fair representation of the plaintiffs and have arbitrarily, discriminatorily, and in bad faith deprived them of their contract employment rights and their rights to a fair hearing. In addition, the defendant Unions permitted the Decision of January 24, 1984, to stand and failed to take any steps to appeal said Decision or to seek review thereof by the Multi-Conference Change of Operations Committee which was the proper tribunal to hear the grievances.

24. As a direct result of the defendant Unions' collusion with the defendant Company in the above actions and in its failure to represent the plaintiffs in a fair and

effective manner, the Joint Committee entered the Decision of January 24, 1983, which wrongfully revised the active seniority list of October 10, 1982, in accordance with the defendants' actions and in violation of the above Agreements and Change of Operations Decision; which denied the plaintiff's legitimate claims for monetary damages; and which denied the plaintiff Terry's grievance without due consideration. While said Decision required the recall of the plaintiffs, the plaintiffs incurred substantial damages in lost wages and were placed in lower seniority positions as a result of the Committee's actions.

SECOND CAUSE OF ACTION

25. The plaintiffs hereby incorporate by reference Paragraphs 1 through 24 above as if fully set forth herein.

26. Following the Decision in Case Number R-21-83 of January 24, 1983, the defendant Company recalled the re-domiciled drivers including the plaintiffs who had been placed on layoff from November 23, 1982, to January, 1983. At the same time it placed on layoff the 30 drivers who had been on the inactive list as of October 10, 1982, but who had been called back since that time. However, on or about February 8, 1983, all 30 Winston-Salem drivers who had been laid off the previous day were called back to work. Most did not even receive their notice of layoff from the previous day before receiving notice of recall, and none of them missed any time from work whatsoever. At that time there was no increase of "regular work" which would justify an immediate and permanent recall of the Winston-Salem drivers. The effect of this action of the defendant Company was to permit said Winston-Salem drivers to regain their places on the active list ahead of the redomiciled drivers including the plaintiffs. This action on the part of the Company was taken with the acquiescence and collusion of the defendant Unions and constitutes a blatant subter-

fuge and circumvention of the Decision of January 24, 1983.

27. On or about February 26, 1983, 20 re-domiciled drivers including some of the plaintiffs were laid off. None of the 31 Winston-Salem drivers who had been recalled on February 8, 1983, were placed on layoff at that time.

28. On February 28, 1983, the plaintiffs filed a grievance contending that the layoff of February 26, 1983, was a "subterfuge" by the defendant Company to circumvent the Decision of the Eastern Conference Joint Area Committee dated January 24, 1983, in Case Number R-21-83. The plaintiffs requested to be recalled by the defendant Company and to be compensated for their lost wages. Said grievance was scheduled to be heard by the Carolina Bi-State Grievance Committee in Myrtle Beach, South Carolina, on March 16, 1983. Prior to said hearing, the plaintiffs objected to the defendant Local Union's anticipated representation on the grounds that said defendant had an admitted conflict of interest in representing opposing groups of members. On that basis the plaintiffs requested the right to have independent counsel at said hearing. The defendant Local Union denied said request. Subsequently, the plaintiffs informed the Committee of the defendant Local Union's conflict of interest and requested the opportunity to have independent counsel and to have additional time in which to prepare their case with the assistance of counsel. The Committee also denied the plaintiffs' request and conducted a hearing on the plaintiffs' grievance. In the course of said hearing the Committee and the defendant Local Union through its agent refused to allow the plaintiffs to question the defendant Union witnesses.

29. After a hearing on the grievance, the Committee rendered a Decision dated March 16, 1983, in which it found that the layoff was proper and was not a "subterfuge". Thereafter, the plaintiffs attempted to appeal said Decision to the Joint Committee and to the National Grievance Committee but were denied review. Accordingly, the plaintiffs exhausted all remedies available to them or made every reasonable effort to do so.

30. In its actions from February 4, 1983, through March, 1983, the defendant Company breached the above Agreements and violated the terms of the Change of Operations as well as the Decision of the Joint Committee dated January 24, 1983. Specifically, the defendant Company violated said Agreements and Decision in its recall of the Winston-Salem drivers who had been on the inactive list as of October 10, 1982, immediately after the layoff of said drivers pursuant to said Decision when there was no increased regular work demand to justify said recall; and in laying off the re-domiciled drivers including the plaintiffs on February 26, 1983, and thereafter in March, 1983. The foregoing and other actions of the defendant Company were committed with the collusion and acquiescence of the defendant Unions for the specific purpose of favoring Winston-Salem drivers who had been on the inactive list at the time of the Change of Operations by circumventing the Decision of January 24, 1983, in order to permit Winston-Salem drivers to retain their seniority position which they held prior to the Change of Operations, thereby permitting the layoff of redomiciled drivers including the plaintiffs on February 26, 1983, and thereafter.

31. The defendant Unions, in breach of their statutory duty of fair representation owing to the plaintiffs under the provisions of the Act, conspired with the defendant Company to engage in the aforesaid actions in violation of the rights of the plaintiffs; and acquiesced in such acts in order to further the interests of the Winston-Salem members who had been on the inactive list at the time of the Change of Operations and to bring them back onto the active list. Said actions on the part of the de-

fendant Unions in concert with and in collusion with the defendant Company constitutes blatant discrimination against the plaintiffs in favor of other members of the defendant Local Union who had been employed at the Winston-Salem terminal for a longer period of time.

32. The defendant Unions further breached their duty of fair representation against the plaintiffs in refusing to permit plaintiffs to retain independent counsel when it was clear by the defendant Local Union's previous actions that it had an insurmountable conflict of interest and could not represent the plaintiffs in a fair and effective manner. The defendant Unions further violated their duty of fair representation against the plaintiffs in refusing to allow the plaintiffs to conduct their own representation by questioning Union witnesses at the hearing before the Bi-State Committee.

Furthermore, after the representation of the plaintiffs was undertaken by the defendant Unions, the defendant Unions failed to represent the plaintiffs in an effective manner. By failing to act on the plaintiffs' behalf as described herein and by their perfunctory and inadequate actions taken, the defendant Unions have violated their duty of fair representation of the plaintiffs and have arbitrarily, discriminatorily, and in bad faith deprived them of their contract employment rights and their rights to a fair hearing.

33. As a direct result of the defendant Unions' collusion with the defendant Company in the above actions and their failure to represent the plaintiffs in a fair and effective manner, the Bi-State Committee found that the Decision of the Joint Committee of January 24, 1983, had not been violated and that the subsequent layoffs and recalls were proper pursuant to said Decision.

THIRD CAUSE OF ACTION

34. The plaintiffs hereby incorporate by reference Paragraph 1 through 33 above as if fully set forth herein.

35. Following the above Decision on the plaintiffs' grievance of February 28, 1983, the defendant Company continued on a periodic basis laying off and recalling drivers in a manner contrary to the Agreement and Change of Operations as well as the Decision of the Eastern Conference Joint Area Committee of January 24, 1983. In fact, the defendant Company has continued such action up to the present time.

36. On April 29, 1983, the plaintiffs filed an additional grievance claiming that they had been improperly excluded from a recall of April 24, 1983. On or about May 27, 1983, the defendant Local Union's business agent decided on his own motion that the recall of April 24, 1983, was in compliance with the previous decisions in this case.

37. The defendant Company's continued actions as set forth above constitute blatant violations of the plaintiffs' rights under the Agreement, the Change of Operations Decision, and the Decision of the Joint Committee of January 24, 1983. As previously stated, the defendant Company has continued to act in collusion with and with the acquiescence of the defendant Unions in denying to the plaintiffs their employment rights and in discriminating against the plaintiffs in favor of the Winston-Salem drivers.

38. The defendant Unions, in breach of their statutory duty of fair representation owing to the plaintiffs under the provisions of the Act, have conspired with the defendant Company to engage in the continuing violations of the rights of the plaintiffs; and have acquiesced in such acts in order to further the interests of the Winston-Salem members who had been on the inactive list at the time of the Change of Operations and to bring them back

onto the active list. Said actions on the part of the defendant Unions in concert with and in collusion with the defendant Company constitutes blatant discrimination against the plaintiffs in favor of other members of the defendant Local Union who had been employed at the Winson-Salem terminal for a longer period of time.

39. The defendant Unions further breached their duty of fair representation against the plaintiffs in failing to pursue the plaintiffs' grievance of April 29, 1983, and in failing to represent the plaintiffs in said grievance in an effective and adequate manner. By failing to act on the plaintiffs' behalf and by their perfunctory and inadequate actions taken, the defendant Unions have continued to violate their duty of fair representation of the plaintiffs and have arbitrarily, discriminatorily, and in bad faith deprived them of their contract employment rights and their rights to a fair hearing.

40. As a direct result of the defendant Company's violations of said Agreement and Decisions and of the defendant Unions' collusion with the defendant Company and additional breaches of its duty of fair representation, the plaintiffs have been and continue to be placed at a lower seniority position than that to which they were entitled according to the Change of Operations resulting in frequent layoffs from their employment and consequential lost wages.

DAMAGES

41. As a direct and proximate result of the defendant Company's violation of the Agreement and Decisions described above, and the breach by the defendant Unions of their duty of fair representation owing to the plaintiffs, each plaintiff has suffered and continues to suffer severe and substantial damages, including the following:

(a) Lost wages in an amount in excess of $15,000.00;

(b) Costs and expenses for moving, travel, and other expenditures related to transferring himself and his family to Winston-Salem, North Carolina, in excess of those expenses paid by the defendant Company pursuant to the Change of Operations Decision;

(c) Future loss of wages in an amount to be shown at trial;

(d) Insurance, health, welfare, pension, social security benefits, and other benefits in an amount to be shown at trial;

(e) Damages on account of the mental and emotional distress suffered by the plaintiff as a result of his frequent periods of unemployment resulting from the defendants' actions described herein.

42. The actions of the defendants as described herein were undertaken in bad faith with malice or wanton and reckless disregard for the plaintiffs' rights under the Agreement and other Decisions cited herein, and for the duty of fair representation owed by defendant Unions to the plaintiffs. Each plaintiff is thereby entitled to recover punitive damages from the defendants in an amount in excess of $25,000.00.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray this Court for the following relief:

(1) That this Court declare that the actions of the defendants as described herein are unlawful, wrongful, and in violation of the plaintiffs' rights arising out of the law, the Agreements, and the Decisions herein;

(2) That each of the plaintiffs recover compensatory and punitive damages as proven at trial;

(3) That this Court issue a permanent injunction enjoining the defendants from continuing to violate the

plaintiffs' rights and directing the defendant Company to place the plaintiffs in their proper seniority positions to which they were entitled as a result of the Change of Operations Decision of July 26, 1982;

(4) That the plaintiffs recover reasonable attorney's fees for their representation in this case;

(5) That the costs of this action be assessed against the defendants;

(6) That this Court grant such other and further relief as may seem just and proper;

(7) The plaintiffs demand a trial by jury on all issues herein.

This the 3d day of August, 1983.

/s/ Jim D. Cooley
JIM D. COOLEY

/s/ Robert M. Elliot
ROBERT M. ELLIOT
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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA WINSTON-SALEM DIVISION

No. C-83-693-WS

THOMAS C. TERRY, *et al.*,
Plaintiffs,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; *et al.*,
Defendants.

ANSWER TO AMENDED COMPLAINT

[Filed September 21, 1983]

The defendant, Chauffeurs, Teamsters and Helpers Local 391 (hereinafter referred to as Local 391) answering the complaint of the plaintiffs, alleges and says:

FIRST DEFENSE

The complaint fails to state claim against defendant Local 391 upon which relief can be granted.

SECOND DEFENSE

The complaint is barred because of the running of the applicable statute of limitations or the doctrine of latches or both.

THIRD DEFENSE

The defendant McLean Trucking Company, Inc. (hereinafter referred to as the "Company") and the defendant Unions are parties to a Collective Bargaining Agreement. Said Collective Bargaining Agreement contains a grievance procedure. Pursuant to said grievance pro-

cedure, defendant Local 391 filed grievances on behalf of the plaintiffs concerning the matters raised by the plaintiffs in this complaint. Said grievances were heard by the proper grievance committees as established by the grievance procedure under the Collective Bargaining Agreement. Said committees rendered two final and binding decisions. The first decision, dated January 24, 1983, a copy of which is attached hereto as Exhibit A, and incorporated by reference herein, found that the defendant Company had breached the Collective Bargaining Agreement and ordered the defendant Company to take certain steps to rectify its error. The defendant Company took the steps required by the grievance decision of January 24, 1983. The second decision rendered on or about March 16, 1983, which dealt with actions taken by the Company after January 24, 1983, found that the defendant Company had not breached the Collective Bargaining Agreement in effect between the defendant Company and the defendant Unions. The results of these grievance procedures are final and binding on the plaintiffs and cannot be relitigated in this Court.

FOURTH DEFENSE

The claims of the plaintiffs are barred by their failure to exhaust the procedures for settlements of complaints and grievances established by the By-Laws of the defendant Local 391, as expressly required in Article XIII of the By-Laws of the defendant Local 391.

FIFTH DEFENSE

Defendant Local 391 has properly and fairly represented the plaintiffs at all times under the Collective Bargaining Agreement in force between the Company and Local 391, has not discriminated against the plaintiffs in any way and therefore the Complaint against the defendant Local 391 should be dismissed.

SIXTH DEFENSE

The defendant Company was justified under the provisions of the Collective Bargaining Agreement in effect between the Company and the defendant Unions in taking the actions ultimately complained of by the plaintiffs in this complaint and there was, therefore, no breach of the Collective Bargaining Agreement.

SEVENTH DEFENSE

In answer to the specific allegations contained in the numbered paragraphs of the Amended Complaint, the defendant Local 391 alleges and says:

1. As to the allegations in paragraphs 1 and 2 of the complaint, it is admitted that plaintiffs contend that the cited federal statutes grant jurisdiction in this case. However, as the complaint fails to state claims for relief against Local 391 there is no jurisdiction and therefore said allegations in paragraphs 1 and 2 are denied.

2. It is denied that any unlawful employment practices occurred as alleged in paragraph 3 of the complaint. However, it is admitted that the actions which plaintiffs complained of took place within the Middle District of North Carolina.

3. As to the allegations in paragraphs 4 and 5 of the complaint, the defendant Local 391 is without knowledge or information sufficient to form a belief as to the truth of said allegations and therefore said allegations of paragraphs 4 and 5 are denied.

4. The allegations of paragraphs 6, 7 and 8 of the complaint are admitted.

5. As to the allegations in paragraph 9 of the complaint, it is denied that the plaintiffs are entitled to enforce the provisions of the Collective Bargaining Agreement referred to in paragraph 8 of the complaint. All other allegations of paragraph 9 of the complaint are admitted.

6. As to the allegations in paragraph 10 of the complaint, it is admitted that Article VIII of the Agreement contains certain provisions. The provisions contained in Article VIII of the "Agreement" are attached hereto as Exhibit B and incorporated herein by reference. All other allegations of paragraph 10 of the complaint are denied.

7. As to the allegations in paragraph 11 of the complaint, it is denied that prior to October 10, 1982, the plaintiffs were members of the defendant Local 391. The other allegations of paragraph 11 of the complaint are admitted.

8. As to the allegations in paragraph 12 of the complaint, it is admitted that on or about July 26, 1982 the defendant Company's Change of Operation Plan was heard by the Joint Conference Change of Operation Committee which rendered a decision, a copy of which is attached hereto as Exhibit C and incorporated herein by reference. That decision was amended on August 4, 1982. A copy of that Amendment is attached hereto as Exhibit D and incorporated herein by reference. That Decision and Amendment of the Joint Conference Change of Operations Committee, which are attached to this Answer, speak for themselves and therefore the other allegations of paragraph 12 of the complaint are denied.

9. As to the allegations in paragraph 13 of the complaint, it is admitted that the plaintiffs were given the opportunity to bid on certain terminals where they could transfer to pursuant to the Change of Operations Plan of the Company and the Decision of the Joint Conference Change of Operations Committee. As to the other allegations of paragraph 13 of the complaint, defendant Local 391 is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore said allegations are denied.

10. As to the allegations in paragraph 14 of the complaint, it is admitted that on or about October 10,

1982, all of the plaintiffs transferred to the Winston Salem terminal of the defendant Company. As to the other allegations of paragraph 14 of the complaint, defendant Local 391 is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore said allegations are denied.

11. As to the allegations in paragraph 15 of the complaint, it is admitted that on or about November 23, 1982, thirty employees of the defendant Company were placed on layoffs and that on November 24, 1982, a grievance was filed by certain employees of the defendant company concerning this layoff. All other allegations of paragraph 15 of the complaint are denied.

12. As to the allegations in paragraph 16 of the complaint, is is admitted that on or about November 30, 1982, the plaintiff Terry filed a grievance requesting that he be returned to his original terminal in Oklahoma City, Oklahoma. All other allegations of paragraph 16 of the complaint are denied.

13. As to the allegations in paragraph 17 of the complaint, it is admitted that during December, 1982, certain employees of the defendant Company were recalled to work from layoff status and that on or about January 7, 1983, certain other employees of the Company were placed on layoff. All other allegations of paragraph 17 of the complaint are denied.

14. As to the allegations in paragraph 18 of the complaint, it is admitted that the Eastern Conference Joint Area Committee heard grievances filed by employees of the defendant Company, including some of the plaintiffs. This hearing was held on January 24, 1983. Following that hearing the Committee rendered a decision on or about January 24, 1983, a copy of which is attached hereto as Exhibit E and incorporated herein by reference. All other allegations of paragraph 18 of the complaint are denied.

15. As to the allegations of paragraph 19 of the complaint, it is admitted that the Eastern Conference Joint Area Committee issued a decision in Case No. R-21-83, a copy of which is attached as Exhibit E. That decision speaks for itself and therefore the other allegations of paragraph 19 of the complaint are denied.

16. As to the allegations in paragraph 20 of the complaint, it is admitted that in the decision attached hereto as Exhibit E, the Eastern Conference Joint Area Committee denied plaintiff Terry's grievance which had been filed on or about November 30, 1982. All other allegations of paragraph 20 of the complaint are denied.

17. The allegations of paragraphs 21, 22, 23 and 24 are denied.

18. As to the allegations of paragraph 25 of the complaint, the defendant Local 391 hereby incorporates by reference thereto its answers to paragraphs 1 through 24 of the complaint, as set forth above.

19. As to the allegations of paragraph 26 of the complaint, it is admitted that following the decision in case No. R-21-83 of January 24, 1983, attached hereto as Exhibit E, the defendant Company recalled certain employees, including the plaintiffs, who had been placed on layoff and were ordered to be returned to active status by the decision of January 24, 1983. It is also admitted that following the decision in Case No. R-21-83 of January 24, 1983, the Company placed on layoff thirty employees and that these thirty employees were recalled back to work on or about February 8, 1983. All other allegations of paragraph 26 of the complaint are denied.

20. As to the allegations of paragraph 27 of the complaint, it is admitted that on or about February 26, 1983, twenty employees of the defendant Company, including some of the plaintiffs, were laid off but that none of the thirty employees who had been recalled on February 8, 1983, were placed on layoff at that time. All other allegations of paragraph 27 of the complaint are denied.

21. As to the allegations in paragraph 28 of the complaint, it is admitted that on February 28, 1983, certain employees of the defendant Company filed a grievance, a copy of which is attached hereto as Exhibit F and incorporated herein by reference. As that grievance speaks for itself, the other allegations of paragraph 28 of the complaint dealing with what was stated or contended or requested in said grievance are denied. It is further admitted that the grievance filed on or about February 28, 1983, was scheduled to be heard by the Carolina Bi-State Grievance Committee in Myrtle Beach, South Carolina on March 16, 1983. All other allegations of paragraph 28 of the complaint are denied.

22. As to the allegations in paragraph 29 of the complaint, it is admitted that following the hearing on the grievance, the Carolina Bi-State Grievance Committee rendered a decision dated March 16, 1983, a copy of which is attached hereto as Exhibit G and incorporated herein by reference. It is also admitted that following this decision, certain employees of the defendant Company, including some of the plaintiffs, attempted to appeal said decision to the Eastern Conference Joint Area Committee and the National Grievance Committee. All other allegations of paragraph 29 of the complaint are denied.

23. The allegations of paragraphs 30, 31, 32 and 33 of the complaint are denied.

24. As to the allegations in paragraph 34 of the complaint, the defendant Local 391 hereby incorporates by reference thereto its answers to paragraphs 1 through 33 of the complaint as set forth above.

25. As to the allegations in paragraph 35 of the complaint, it is admitted that since February 28, 1983, the defendant Company has laid off and recalled employees.

All other allegations of paragraph 35 of the complaint are denied.

26. As to the allegations in paragraph 36 of the complaint, it is admitted that on or about April 29, 1983, certain employees of the defendant, including some of the plaintiffs, filed an additional grievance, a copy of which is attached hereto as Exhibit H and incorporated herein by reference. All other allegations of paragraph 36 of the complaint are denied.

27. The allegations of paragraphs 37, 38, 39, 40, 41 and 42 are denied.

WHEREFORE, the defendant Local 391 prays the Court that the plaintiffs have and recover nothing from the defendant Local 391; that the complaint of the plaintiffs against defendant Local 391 be dismissed; that the costs of this action, including a reasonable attorney fee for the attorneys of defendant Local 391 be assessed against the plaintiffs; and that the Court grant such other and further relief as it may deem just and proper.

This the 21 day of Sept., 1983.

/s/ J. David James
J. DAVID JAMES
Attorney for Local 391
Smith, Patterson, Follin, Curtis,
James & Harkavy
700 Southeastern Building
Greensboro, North Carolina 27401
Telephone: (919) 274-2992

[Certificate of Service Omitted in Printing]

EXHIBIT A

Eastern Conference Joint Area Committee

Established in accordance with the terms and conditions of the National Master Freight Agreement and the Carolina Supplemental Agreement, entered into by and between the Local Unions and carriers engaged in City Pickup and Delivery and/or Over-the-Road Operations.

Docket No. R-21-83

IN THE MATTER OF THE DISPUTE BETWEEN

TEAMSTERS LOCAL(S) No. 391

Kernersville, NC

and

MCLEAN TRKG. CO.

Submission

We, the undersigned, parties to the National Master Freight Agreement and the Carolina Supplemental Agreement, hereby agree to submit the dispute to arbitration under the Rules of Procedure prescribed by the Eastern Conference Joint Area Committee, by virtue of its authority, as set forth in Article 43 and 44 of the Carolina Supplemental Agreement, the following:

> On behalf of E.L. Strange, D.E. Henderson, et al, the Union is alleging a violation of Arts. 5, 8 & 42. Improper Layoff. Requesting 8 hrs. per day on unjustly laid off time.

The undersigned further agree that a majority decision of the Eastern Conference Joint Area Committee in the

above dispute will be final, conclusive and binding with no appeal and, further, that neither party will attempt through any overt acts, to void the decision rendered.

The undersigned also agree that failure to comply with the decision of a majority of the Committee within ten (10) days of the date of the decision will result in the loss of all contract rights, privileges and benefits due them under Article 44 of the Carolina Supplemental Agreement.

Date	Jan. 24, 1983
Employer	McLean Trkg.
Signed by	R.S. Bell
Title	Director—Labor Relations
Local Union(s)	391
Signed by	Charles Williams
Title	First Trustee & B.A.

DECISION

The panel in executive session, motion made, seconded and carried that in accordance with the established seniority rules of the Joint Conference, Change of Operations Committee, the company and Local Union are instructed that, effective February 7, 1983, the company is to recall to work those drivers that made up the Winston-Salem active seniority list on the date the change of operations took effect. (Oct. 10-11, 1982), i.e., those redomiciled drivers as well as Winston-Salem drivers working on this date. Those drivers who do not qualify for regular work under this decision shall be laid off and subject to recall when regular work develops in excess of 220 regular positions. Should future layoffs be necessary then individuals on this active seniority list shall be laid off in reverse seniority order and shall be recalled to work

before those drivers who were on the inactive list as of Oct. 10-1982 are recalled.

The company and Local Union are further instructed to verify the number that were actually on the active seniority list as of October 11-12, 1982, and if that number is at odds with the number 220, as listed herein, then that number shall apply. The monetary claim is denied.

Relative to the claim by Mr. Terry, the Committee reviewed the transcript, the records, and the decision and find that under the application of the Southern Modified Seniority, the claim is without merit. The claim is denied. Cost Split.

James H. Hutchinson, Jr. Employer Co-Secretary	Joseph W. Burkhard Union Co-Secretary
January 24, 1983 (Date)	January 24, 1983 (Date)

EXHIBIT B

Section 5.

In the event of strikes, work stoppages, or other activities which are permitted in case of deadlock, default, failure to comply with majority decisions or permitted by Article 8, Section 2(a) under this Agreement or any Supplement thereto, no interpretation of this Agreement or any Supplement thereto by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strikers unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement.

Section 6.

Change of Operations

Change of Operations Committee

(a) Present terminals, breaking points or domiciles shall not be transferred or changed without the approval of an appropriate Change of Operations Committee. Such Committee shall be appointed in each of the Conference Areas, equally composed of Employer and Union representatives. The Change of Operations Committee shall have the authority to determine the senority of the employees affected and such determination shall be final and binding.

Such Committee, however, shall observe the Employer's right to designate home domiciles and the operational requirements of the business. Individual employees shall not be redomiciled more than once during the term of this contract as a result of an approved Change of Operations unless a merger, purchase, sale, acquisition, or consolidation of Employers is involved, or unless the Change of Operations Committee rules to the contrary based on the facts presented.

In considering a Change of Operations, the Change of Operations Committee shall have the authority to extend the three year layoff period contained in Article 5, Section 1, or in applicable Supplemental Agreements, in the event it appears toward the end of such three year period that the circumstances so warrant.

The Change of Operations Committee shall also have jurisdiction for a period of twelve (12) months following the opening of a new terminal to consider the redomicile of employees who are laid off as a direct result of such opening of a terminal. This Committee shall also have jurisdiction over the closing of terminals in regard to seniority.

The above shall not apply within a 25-mile radius.

Change of Operations Committee Procedure

(b) The National Grievance Committee shall adopt Rules of Procedure concerning the application and administration of this Article.

The Employer shall notify all affected Local Unions of the proposed Change of Operations at least twenty (20) calendar days prior to the hearing at the Conference Joint Area Committee, and the Employer and the Local Unions involved shall have a mutual responsibility to inform the employees subject to redomicile prior to such hearing in accordance with the practice and procedures agreed to in the respective Area Committee. Any exception or waiver of the aforesaid twenty (20) day period shall be mutually agreed to between the Employer and the Local Unions involved and approved by the Conference Area Change of Operations Committee.

Moving Expenses

(c) Where an employee is required to transfer to another domicile in order to follow employment as a result of a Change of Operations, the Employer shall move the

employee and assume the responsibility for proven loss or damage to household goods due to such move, including insurance against loss or damage. Should any employee possess household items of unusual or extraordinary value which will be included in the move, such items shall be declared and an appraised value determined prior to the move. The Employer shall provide packing materials for the employee's household goods when requested or at the employee's request pay all costs and expenses of moving such household goods, including packing.

The Employer shall pay reasonable expenses to demount and remount an employee's mobile home, if used as his residence and in such instance shall pay normal expenses to move such mobile home, including the use of other modes of transportation where required by law.

An employee shall have a maximum of one year to move in accordance with the provisions of an approved Change of Operations unless, prior to the expiration of such year, he requests, in writing, an extension for a reasonable period of time due to an unusual or special problem. The Employer shall provide lodging for the employee at the point of redomicile, not to exceed sixty (60) calendar days, and in addition, shall reimburse the employee twenty cents (20¢) per mile to transport one personal automobile to the new location.

The Employer shall not be responsible for moving expenses if the employee changes his residence as a result of voluntary transfer.

None of the Employer obligations set forth in this Section shall apply to transfers of domiciles within a 50-mile radius.

Change of Operations Seniority

(d) The Change of Operations Committee established herein shall have the sole authority to determine questions of the application of seniority in those situations pre-

sented to it and in connection therewith the following general rules shall apply, subject, however, to modification as provided by Section 6(g) below:

Closing, Partial Closing of Terminals—
Transfer of Work

(1) When branches, terminals, divisions or operations (hereinafter "terminal(s)") are closed or partially closed and the work of such terminal(s) is transferred, in whole or in part, to another terminal(s) the active employees (excluding those employees on letter of layoff) at the closed or partially closed terminal(s) shall have the right to bid into a master seniority roster (road or city) comprised of bidders from the active seniority rosters of closed or partially closed terminal(s) in the order of their continuous classification (road or city) seniority. Continuous classification seniority shall be defined as that seniority which the employee is currently exercising and has not been broken in the manner provided by Article 5, Section 1 or by voluntary changes in domicile not directed, approved or ordered by a Change of Operations Committee. Employees shall bid from the combined master seniority roster into openings at the terminal(s) into which work is being transferred. Employees so transferring shall be "dovetailed" into the appropriate active seniority roster at the new terminal(s) in the order of their continuous classification seniority. Such transfers shall be permitted prior to the recall of laid off employees at such gaining terminal(s). If and when additional employees are required in excess of those who formed the combined active roster at the point of redomicile, employees on letter of layoff at that location shall be recalled. If recalled, such employees shall be "dovetailed" with their continuous classification seniority.

In addition, the inactive seniority rosters (employees who are on letter of layoff) at the terminal(s) from which employees are being redomiciled shall be "dove-

tailed" into a master "laid-off seniority roster and such employees shall have the same opportunities to transfer to terminal(s) within the Area of Supplemental Agreement which are afforded to employees covered by the provisions of subparagraph 2(b) below.

Closing of Terminals—Elimination of Work

(2) a. When a terminal(s) is closed and the work of such terminal(s) is eliminated, an employee who was formerly employed at another terminal shall have the right to return to such former terminal and exercise his continuous classification (road or city) seniority, provided, he has not been away from such former terminal for more than a three (3) year period.

Layoff

b. When a terminal(s) is closed and the work of such terminal(s) is eliminated, employees who are laid off thereby shall be given first opportuntiy for available regular employment at any other terminal(s) of the Employer within the Area of the Supplemental Agreement where such employee was employed. The obligation to offer such employment shall continue for a period of three (3) years from the date of closing. However, the Employer shall not be required to make more than one offer during this period. Any employee accepting such offer shall pay his own moving expenses. If hired, he shall go to the bottom of the seniority board for bidding and layoff purposes, but shall retain company seniority for fringe benefits only.

Opening of Terminals

(3) When a new terminal(s) is opened (except as a replacement for existing operations or a new division in a locality where there are existing operations), the Employer shall offer to those employees, if any, affected thereby the opportunity to transfer to regular positions in the new terminal(s) in the order of such employee's

continuous classification (road or city) seniority date as defined herein. Upon arrival at such new location, such employees shall be "dovetailed" with their continuous classification (road or city) seniority date together with other employees so transferring.

This provision is not intended to cover situations where there is replacement of an existing operation or where a new division is opened in a locality where there is an existing terminal. In these latter situations, those employees laid off at the existing facilities shall have first opportunity for employment at the new operation in accordance with their continuous classification (road or city) seniority date, and upon arrival shall be similarly "dovetailed." If all regular full-time positions are not filled in this manner, then the provisions of the preceding paragraph shall apply.

(4) Any employee redomiciled by an approved Change of Operations or voluntary transfer to another domicile shall upon reporting to such new domicile be deemed to have relinquished his right to return, with seniority, to the domicile from which he was transferred, except under another approved Change of Operations. Employees who avail themselves of the transfer privileges because they are on layoff at their original terminal may exercise their seniority rights if work becomes available at their original terminal during the three year layoff period allowed them at their original terminal.

Definition of Terms

(e) The term "continuous classification seniority" as used in this Agreement is defined as that seniority which the employee is currently exercising and has not been broken in the manner provided in Article 5, Section 1, or by voluntary changes in domicile not directed, approved or ordered by a Change of Operations Committee.

Qualifications

(f) In all transfers referred to in this Section, the employee must be qualified to perform the job by experience in the classification. If a driver test is required, such test shall be given by a qualified driver-supervisor or driver.

Intent of Parties

(g) The parties acknowledge that the above rules are intended solely as general standards and further that many factual situations will be presented which necessitate different application, modification or amendment. Accordingly, the parties acknowledge that questions of the application of seniority rights may arise which require different treatment and it is anticipated and understood that the Employers and Unions jointly involved and/or the respective grievance committees may mutually agree to such disposition of questions of seniority which in their judgment is appropriate under the circumstances.

The Change of Operations Committees, as provided herein or in the Supplemental Agreements, shall have the authority to determine the application of seniority in those situations presented to them. In all cases the seniority decisions of the Joint Committees, including the Change of Operations Committees and Subcommittees, established by the National Master Freight Agreement and the respective Supplemental Agreements shall be final and binding.

Section 7.

All local, area and national grievance committees as constituted under this Agreement shall have the jurisdiction and power to decide grievances which arose under the preceding agreements and supplements thereto, applying, however, the contract under which the grievance arose.

ARTICLE 9.

PROTECTION OF RIGHTS

Section 1.

Picket Lines

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's places of business.

Section 2.

Struck Goods

It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if any employee refuses to perform any service which his Employer undertakes to perform as an ally of an Employer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the Employer or person on strike.

Section 3.

Subject to Article 32 hereof (Subcontracting), the Employer agrees that it will not cease or refrain from handling, using, transporting, or otherwise dealing in any of the products of any other Employer or cease doing business with any other person, or fail in any obligation imposed by the Motor Carriers' Act or other applicable liaw, as a result of individual employees exercising their rights under this Agreement or under law, but the Employer shall, notwithstanding any other provision in this Agreement, when necessary, continue doing such business,

including pickup or delivery to or from the Employer's terminal and to or from the premises of a shipper or consignee.

Section 4.

The layover provisions of the applicable Supplemental Agreement shall apply when the Employer knowingly dispatches a road driver to a terminal at which a primary picket line has been posted as a result of the exhaustion of the grievance procedure, or after proper notification of a picket line permitted by the collective bargaining agreement, or economic strikes occurring after the expiration of collective bargaining agreements or to achieve a collective bargaining agreement. In such event and upon his request, a driver shall be provided first class public transportation to his home terminal, plus be paid a minimum of eight (8) hours or actual time spent while returning, whichever is greater. The Employer shall determine the mode of transportation to be utilized.

Section 5.

Grievances

Within five (5) working days of filing of grievance claiming violation of this Article, the grievance shall be submitted directly to the National Grievance Committee without taking any intermediate steps, any other provisions of this Agreement to the contrary notwithstanding.

EXHIBIT C

Joint Conference Change of Operations Committee

Established in accordance with the terms and conditions of the National Master Freight Agreement and the various Supplemental Agreements, entered into by and between the Local Unions and carriers engaged in City Pickup and Delivery and/or Over-the-Road Freight Operations.

Docket No. JC-CO-7-82

IN THE MATTER OF REQUEST FOR CHANGE OF OPERATIONS INVOLVING 20, 41, 100, 135, 377, 413, 600, 710, 28, 29, 71, 261, 391, 429, 538, 592, 480, 519, 568, 577, 667, 728, 745, 886, 891 & 988

and

MCLEAN TRUCKING COMPANY

SUBMISSION

We, the undersigned, parties to the National Master Freight Agreement and the various Supplemental Agreements, hereby agree to submit the matter to arbitration under Article 8(e) of the National Master Freight Agreement and the rules and regulations established pursuant thereto.

REQUEST FOR CHANGE OF OPERATIONS

The undersigned further agree that a majority decision of the Joint Conference Change of Operations Committee in the above matter will be final, conclusive and binding with no appeal and, further, that neither party will attempt through any over acts, to void the decision rendered.

Date July 26, 1982
Employer McLean Trucking Co.
Signed by C.R. Jones
Title Vice President-Labor Relations

Local No.	Signature	Title
20	Bill Raike	V.P.
41		
100	Mike Connelley	B.A.
135	Bill Waskom	B.A.
377		
413	Don Linville	Secy.-Treas.
600	Robert J. Ramshaw	
710		
28	Frank Wood	
29	David A. Chrisman	
71	Ken Bowman	
261	Jack Frazier	
391	C.E. Williams	
429	John Ignatosky	
538	Raymond Baker	
592	R.M. Jenkins	
480	Clyde Powers	
519		
568	Laird Evans	
577	John Stanton	
667	Johnny Raney	
728	F.W. Shepherd	
745		
886	J. Fisher	
891	Frank Hopkins	
988		

DECISION

The panel in executive session, motion made, seconded and carried that the change of operations be approved as submitted except as modified herein.

1. The company shall pay lodging, at the point of redomicile, for a period of sixty (60) days.
2. The company is directed to continue to pay applicable pension contributions to the same pension trust funds as paid immediately prior to the effective date of the change until such time as the reciprocity agreement is effective and consistent with applicable law.
3. The company is directed to make health and welfare contributions to the applicable health and welfare fund at the point of redomicile in such a manner as to provide continuous coverage, where the trustees at the involved funds agree. Health & Welfare payments may continue to be made to, and health & welfare coverage provided by the original fund for a period of time not to exceed two (2) years.
4. The company is to comply with the contract in the payment of moving expenses.
5. Those employees redomiciling shall bid out of their present domicile on the basis of their current classification bidding seniority and shall be dovetailed into the seniority list at the redomicile point on the basis of this bidding seniority except that individuals redomiciling to points within the Eastern Conference area shall be dovetailed on the basis of company seniority.
6. Those individuals on long-term disability or bona fide leave of absence, shall exercise their seniority for redomicile at the time of the bid even though they may not be able to accept work at the redomicile point until a later date.

7. Where applicable (terminals with a single seniority list system) employees which they redomiciled for a period of one (1) year unless a new bid is put into effect after a period of nine (9) months.

The bidding from the losing road driver domicile in the Southern Conference; Nashville, Shreveport, Amarillo, Atlanta & Jackson, Mississippi shall be as follows: Those drivers shall be offered the following options in seniority order. (A) Take a letter of layoff and move under modified seniority system. No moving expenses will be paid. (B) Take a letter of terminal layoff and be subject to recall at driver's home domicile only. (C) Bid to active master list on pool. Must bid a position at a gaining domicile at telephone bid.

Jackson, Mississippi is a closed Southern Conference domicile covered by modified system seniority. Drivers on layoff at the Jackson terminal shall have recall rights under modified system seniority at Meredian, Mississippi, the new terminal that will perform the work that Jackson formerly performed. Modified shall be paid prior to the effective date of the change of operations. June 15, 1982, is to be used to determine active status; drivers who have moved under modified since June 15 are, in effect, redomiciled at that location.

The active seniority list shall be determined as of June 15, 1982.

The effective date of this change shall be no sooner than September 7, 1982.

Cost to Company

James H. Hutchinson, Jr.
Employer Co-Secretary

July 26, 1982
Date

Joseph W. Burkhard
Union Co-Secretary

July 26, 1982
Date

EXHIBIT D

EASTERN CONFERENCE
JOINT AREA COMMITTEE

August 4, 1982

Mr. C.R. Jones, Vice President
Labor Relations
McLean Trucking Company
P.O. Box 213
Winston-Salem, North Carolina 27102

Re: ECJAC Case JC-CO-7-82

Dear Mr. Jones:

Reference is made to the above-captioned case which was heard before the Committee on July 26.

Please make the following additions to the decision on your records:

"There shall be a 90-day window period. The Company shall not be required to bid for 90 days."

With best wishes,

Very truly yours,

JOSEPH W. BURKHARD
Union Co-Secretary

JAMES H. HUTCHINSON, JR.
Employer Co-Secretary

JWB:JHH:dlk
cc: All Local Unions Involved

EXHIBIT E

EASTERN CONFERENCE
JOINT AREA COMMITTEE

Established in accordance with the terms and conditions of the National Master Freight Agreement and the Carolina Supplemental Agreement, entered into by and between the Local Union and carriers engaged in City Pickup and Delivery and/or Over-the-Road Freight Operations.

Docket No. R-21-83

IN THE MATTER OF THE DISPUTE BETWEEN
TEAMSTERS LOCAL(S) No. 391
Kernersville, NC

and

MCLEAN TRKG. CO.

SUBMISSION

We, the undersigned, parties to the National Master Freight Agreement and the Carolina Supplemental Agreement, hereby agree to submit the dispute to arbitration under the Rules of Procedure prescribed by the Eastern Conference Joint Area Committee, by virtue of its authority, as set forth in Article 43 and 44 of the Carolina Supplemental Agreement, the following:

On behalf of E.L. Strange, D.E. Henderson, et al, the Union is alleging a violation of Arts. 5, 8 & 42. Improper Layoff. Requesting 8 hrs. per day on unjustly laid off time.

The undersigned further agree that a majority decision of the Eastern Conference Joint Area Committee is the above dispute will be final, conclusive and binding with

no appeal and, further, that neither party will attempt through any overt acts, to void the decision rendered.

The undersigned also agree that failure to comply with the decision of a majority of the Committee within ten (10) days of the date of the decision will result in the loss of all contract rights, privileges and benefits due them under Article 44 of the Carolina Supplemental Agreement.

Date: Jan. 24, 1983

Employer: McLean Trkg.

Signed by: R.S. Bell

Title: Director—Labor Relations

Local Union(s): 391

Signed by: Charles Williams

Title: First Trustee & B.A.

DECISION

The panel in executive session, motion made, seconded and carried that in accordance with the established seniority rules of the Joint Conference Change of Operations Committees, the company and Local Union are instructed that, effective February 7, 1983, the company is to recall to work those drivers that made up the Winston-Salem active seniority list on the date the change of operations took effect (Oct. 10-11, 1982), i.e., those redomiciled drivers as well as Winston-Salem drivers working on this date. Those drivers who do not qualify for regular work under this decision shall be laid off and subject to recall when regular work develops in excess of 220 regular positions. Should future layoffs be necessary then individuals on this active seniority list shall be laid off in reverse seniority order and shall be recalled to work before those drivers who were on the inactive list as of Oct. 10, 1982 are recalled.

The company and Local Union are further instructed to verify the number that were actually on the active seniority list as of October 11-12, 1982, and if that number is at odds with the number 220, as listed herein, then that number shall apply. The monetary claim is denied.

Relative to the claim by Mr. Terry, the Committee reviewed the transcript, the records, and the decision and find that under the application of the Southern Modified Seniority, the claim is without merit. The claim is denied. Cost Split.

James H. Hutchinson, Jr.
Employer Co-Secretary

January 24, 1983
(Date)

Joseph W. Burkhard
Union Co-Secretary

January 24, 1983
(Date)

EXHIBIT F

COMPLAINT

Date: 2/28/83

Nature of Complaint: The below listed employees contend that they were improperly and unjustly laid off effective Sat., 2/26/83, as a subterfuge to circumvent the decision rendered in Case R-21-83 and Article 8 of the National Master Freight Agreement and Carolina Freight Council Over-the-Road Supplemental Agreement. They are requesting to immediately be returned to the regular lineup and compensated for all lost earnings for the period of time that they were held off in violation of the decision in Case No. R-21-83.

James E. Wilson/Donald E. Henderson

Name of Complainant: Sam Callahan, C.C. Worley and all affected employees

Employed by: McLean Trucking Company

Date(s) Discussed with Employer: 1. ..... 2. ..... 3. .....

Disposition of Complaint: Settled [ ]; Withdrawn [ ];

Referred to Grievance (unable to settle) [ ].

Decision by Committee: Claim Upheld [ ]; Denied [ ].

Basis for Settlement or Withdrawal (Explain)

Steward Agent who handled Complaint: C. S. Williams

EXHIBIT G

OVER THE ROAD AGREEMENT
GRIEVANCE REFERRED TO
BI-STATE COMMITTEE

March 1, 1983

Local Union: TEAMSTERS LOCAL UNION No. 391

Agent's Name: C. S. WILLIAMS

Company: MCLEAN TRUCKING COMPANY

Terminal: WINSTON-SALEM, N.C.

Type of Complaint: Improper Layoff, Paid for time, seniority and violation of change of operations

Name of Employee: James E. Wilson, D. E. Henderson, Sam Callahan, C. C. Worley and all affected employees

Contract—Articles & Sections Violated: Articles 8, 42 National Master Freight Agreement, Carolina Freight Council Over-the-Road Supplemental Agreement and decision in Case No. R-21-83.

State briefly nature of complaint: The above employees contend that they were improperly and unjustly laid off effective Saturday, 2/26/83, as a subterfuge to circumvent the decision rendered in Case R-21-83 and Article 8 of the National Master Freight Agreement and Carolina Freight Council Over-the-Road Supplemental Agreement. They are requesting to immediately be returned to the regular lineup and be compensated for all lost earnings for the period of time that they were held off in violation of the decision in Case No. R-21-83.

What attempt has been made to settle?

Decision of the Bi-State Committee: Having considered all the facts and exhibits, as fully presented by the local union and the employer, and the testimony of the individual grievants, the Committee finds that the layoff of the grievants, effective February 26, 1983, was proper and in accord with the provisions of Articles 8 and 42 of the National Frieight Agreement and the Carolina Freight Council Over-the-Road Supplement, and in compliance with the decision of the Eastern Conference Joint Area Committee in Case No. R-21-83. The Committee finds no subterfuge. According, the Claim is Denied. Fee Union

Case No.: 216 R 83

Chairman: [Illegible]

J. Stephenson

Date:

EXHIBIT H

TEAMSTERS LOCAL UNION NO. 391

COMPLAINT

Date: April 29, 1983

Nature of Complaint: We the below listed employees contend that we were improperly & unjustly by passed on a call back of approximately Sunday 4/24/83 as a subterfuge to circumvent the decision rendered in Case R-21-83. The decision calls for call back of active members of the board as of Oct. 10, 11, 1982. Instead the company called back from the inactive list & the active list. We are requesting to be returned immediately to the regular lineup & compensated for all lost earnings for the period of time that we were held off in violation of the decision in Case R-21-.

Name of Complainant: Coburn K. Barker—A.T. Fields and all affected employees.

Employed by: McLean Trucking Company

Date (s) Discussed with Employer: 1 ——— 2. ——— 3. ———

Disposition of Complaint: Settled []; Withdrawn []; Referred to Grievance (unable to settle) [].

Decision by Committee: Claim Upheld []; Denied [].

Basis for Settlement or Withdrawal (Explain) I have reviewed this complaint and find that the recall was in compliance with the decision in Case No. #R-21-83. If you have any further questions, feel free to call me.

cc W. Honeycutt
W. Bowman
R. V. Durham

Steward Agent who handled Complaint:

C.S. Williams 5/27/83

Copies: White—Union; Canary—Member; Pink—Company.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

No. C-83-693-WS

THOMAS C. TERRY, *et al.*,
Plaintiff

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPER'S OF AMERICA, *et al.*,
Defendants

MOTION TO STRIKE JURY TRIAL DEMAND

NOW COMES, the defendant, Chauffeurs, Teamsters and Helper's Local Union 391, pursuant to Rule 12(f) and Rule 39(a) of the Federal Rules of Civil Procedure and moves to strike the prayer in which the plaintiffs demand a jury trial. Defendant, Local 391, contends for the reason's set forth in the brief filed contemporaneously herewith that plaintiffs have no right to a jury trial in this action.

Wherefore, for the foregoing reasons, defendant respectfully requests the Court to grant its motion to strike plaintiffs jury trial demand.

This the 6 day of January, 1986.

/s/ J. David James
J. DAVID JAMES
Attorney for
Defendant Local 391

SMITH, PATTERSON, FOLLIN,
CURTIS, JAMES & HARKAVY
700 Southeastern Building
Greensboro, North Carolina
27401

Telephone: 919-274-2992

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

File No. C-83-693-WS

THOMAS C. TERRY, *et al.*,
Plaintiffs,

v.

CHAUFFEURS, TEAMSTERS and HELPERS LOCAL 391; and MCLEAN TRUCKING COMPANY, INC.,
Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO STRIKE JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local 203, the plaintiffs hereby respond to the Motion to Strike Jury Trial Demand filed by the defendant Chauffeurs, Teamsters and Helpers Local Union 391 in this action; and request that the Court deny said Motion on the ground that the plaintiffs are entitled to a trial by jury under the United States Constitution and for other reasons stated in the Brief filed in support of this Response.

WHEREFORE, the plaintiffs request that this Court deny said defendant's Motion, and set this case for trial by jury as demanded in the Complaint.

This the 18th day of February, 1986.

/s/ Robert M. Elliot
ROBERT M. ELLIOT
Attorney for Plaintiffs

Of Counsel:

PFEFFERKORN, PISHKO & ELLIOT, P.A.
202 West Third Street
Post Office Box 43
Winston-Salem, North Carolina 27102
Telephone: (919) 725-0251

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

Civil No. C-83-693-WS

THOMAS C. TERRY, DAN FIELDS, JIM CROWE, KEITH BARKER, JAMES A. RICHARDS, DON WRIGHT, DAVID L. GILTZ DALE BISHOP, TONY BAITY, JAMES R. DAVIS, DON BRITT, LONNIE DAVIS, JIM WILSON, DAVID C. KING, DONALD E. HENDERSON, ARTHUR JARRELL, RON RAY, J. C. GREER, GARY PEEBLES, HAROLD DYSON, ED STRANGE, SAM E. CALLAHAN, GEORGE C. BLANKENSHIP, JR., PAUL EMBRY, CLAYTON WORLEY, JOHN R. MARSHAL, and ROBERT C. MUNSEY,

Plaintiffs,

v.

CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL 391; and McLEAN TRUCKING COMPANY, INC.,

Defendants.

ORDER

BULLOCK, District Judge

For the reasons expressed in the opinion filed contemporaneously herewith, the Defendant's motion to strike Plaintiffs' jury demand is DENIED.

Defendant's motion concerns a controlling question of law about which there is ground for difference of opinion; therefore because the issue is critical to the continuation of the pending litigation the court certifies this order for interlocutory appeal under 28 U.S.C. § 1292(b).

Separate trials shall be held on the issues of liability and damages as authorized under Federal Rule of Civil Procedure 42(b).

/s/ Frank W. Bullock, Jr.
United States District Judge

November 10, 1987